No. 17-5639

In the Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF OF NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND NATIONAL ASSOCIATION OF FEDERAL DEFENDERS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

Interest of amici curiae 1

Summary of argument 3

Argument 5

I. The denial of a proportional sentence reduction without explanation undermines the purposes of Section 3582(c)(2) and the sentencing regime 5

A. Section 3582(c)(2) is intended to remedy "systemic injustice" and to provide "systemic relief" 5

B. In practice, courts typically grant proportional reductions and provide reasons when they do not 6

1. Courts typically grant proportional reductions 7

2. Denials typically are for nondiscretionary reasons and are explained 11

C. Denials of proportional reductions without explanation create an appearance of arbitrariness 13

II. The anchoring weight of the Guidelines requires district courts to explain decisions to deny proportional reductions 16

A. The Guidelines range anchors the court's weighing of the Section 3553(a) factors at original sentencing 17

B. A revised Guidelines range anchors the court's weighing of the Section 3553(a) factors in deciding a sentence-reduction motion 18

C. The depth of reasoning will depend on the circumstances, but no reasoning is not enough 23

Conclusion 27

TABLE OF AUTHORITIES

Page

Cases:

Dillon v. *United States*, 560 U.S. 817 (2010) ..... *passim*
Freeman v. *United States*, 564 U.S. 522 (2011) ..... *passim*
Gall v. *United States*,
552 U.S. 38 (2007) 15, 17, 22, 25
Kimbrough v. *United States*, 552 U.S. 85 (2007) 16, 21
Molina-Martinez v. *United States*,
136 S. Ct. 1338 (2016) ..... *passim*
Peugh v. *United States*, 569 U.S. 530 (2013) 17, 18
Rita v. *United States*, 551 U.S. 338 (2007) ..... *passim*
Spears v. *United States*,
555 U.S. 261 (2009) (per curiam) 21
United States v. *Booker*, 543 U.S. 220 (2005) 2
United States v. *Taylor*, 487 U.S. 326 (1988) 25

Statutes and rules:

Sentencing Reform Act of 1984, Pub. L. No. 98-473,
98 Stat. 1987 ..... 4, 16
18 U.S.C. § 3553(a) ..... *passim*
18 U.S.C. § 3553(a)(2) 14
18 U.S.C. § 3553(a)(2)(A) 15
18 U.S.C. § 3553(a)(6) 4, 14, 15
18 U.S.C. § 3553(c) 24
18 U.S.C. § 3553(c)(1) 24
18 U.S.C. § 3553(c)(2) 24
18 U.S.C. § 3582(c)(2) ..... *passim*
28 U.S.C. § 994(o) 6
28 U.S.C. § 994(u) 6, 9
Fed. R. Crim. P. 43(a)(3) 24
Fed. R. Crim. P. 43(b)(4) 14
United States Sentencing Commission, *Rules of Practice and Procedure*, Rule 4.1A (2016) 9

Page

Miscellaneous:

Caryn Devins, *Lessons Learned from Retroactive Resentencing After* Johnson *and Amendment 782*, 10 Fed. Cts. L. Rev. 37 (Winter 2018)....9, 12, 14, 21
U.S.S.G. § 1B1.10 ....9, 19, 20
U.S.S.G. § 1B1.10 cmt. 1(B)(ii) 21
U.S.S.G. § 1B1.10 cmt. 1(B)(iii) 21
U.S.S.G. § 5H1.10 22
U.S.S.G. app. C, amend. 706 ....7, 12
U.S.S.G. app. C, amend. 711 7
U.S.S.G. app. C, amend. 715 7
U.S.S.G. app. C, amend. 750 ....7, 12
U.S.S.G. app. C, supp. amend. 782 ....*passim*
U.S.S.G. app. C, supp. amend. 788 16
United States Sentencing Commission, *2014 Drug Guidelines Amendment Retroactivity Data Report* (January 2018) 7, 12, 20
United States Sentencing Commission, Amendment to the Sentencing Guidelines (July 18, 2014) 11
United States Sentencing Commission, *Annual Report and Sourcebook of Federal Sentencing Statistics* (2015) 20, 21
United States Sentencing Commission, *Final Crack Retroactivity Data Report Fair Sentencing Act* (December 2014) 7, 8, 12
United States Sentencing Commission, Memorandum from Office of Research and Data and Office of General Counsel to Chair Saris (May 27, 2014) 9, 10
United States Sentencing Commission, Memorandum from Office of Research and Data to Chair Saris (July 25, 2014) 10
United States Sentencing Commission, *Preliminary Crack Cocaine Retroactivity Data Report* (June 2011) 7, 8, 12

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the National Association of Criminal Defense Lawyers (NACDL) and the National Association of Federal Defenders (NAFD).

[1] Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Petitioner's consent to the filing of amicus briefs is filed with the Clerk. Amici received respondent's consent to file this brief by letter and have filed that letter with the Clerk.

NACDL is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a membership of many thousands of direct members and up to 40,000 affiliated members. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

NAFD, formed in 1995, is a nationwide, nonprofit, volunteer organization whose membership is comprised of attorneys who work for federal public and community defender organizations authorized under the Criminal Justice Act. Each year, federal defenders represent tens of thousands of individuals in federal court, including in sentence-modification proceedings under 18 U.S.C. § 3582(c)(2). NAFD therefore has both particular expertise and interest in the subject matter of this litigation.

Amici file numerous amicus briefs each year in this Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. Amici filed briefs in many of this Court's sentencing cases following the Court's seminal decision in *United States* v. *Booker*, 543 U.S. 220 (2005). As particularly relevant here, amici have filed briefs in this Court in cases interpreting and applying 18 U.S.C. § 3582(*c*)(2).

Amici promote policies that assure reviewing courts and the public that sentence modification is a reasoned process. Amici appear in support of petitioner to explain that most district courts have applied Section 3582(c)(2) consistently with its intended purpose of remedying in-

justice across a broad category of offenders. But, in a minority of cases, including this one, courts have denied offenders the full benefit of a Guidelines amendment without explanation. That arbitrary treatment of offenders undermines the purposes of Section 3582(c)(2) and the sentencing process more generally. Such unexplained denials also give short shrift to the central role of the Commission and the revised Guidelines range in sentence-modification proceedings.

SUMMARY OF ARGUMENT

The requirement to provide a minimal statement of reasons in sentence-modification proceedings furthers the purposes of 18 U.S.C. § 3582(c)(2) and the sentencing regime, protects the central role of the Sentencing Commission in such proceedings, and enables meaningful appellate review.

I. Section 3582(c)(2) enables an offender to reduce his or her sentence when the Sentencing Commission has decided that the Guidelines range under which the offender was sentenced is unjust. As a plurality of this Court explained, Congress enacted Section 3582(c)(2) to provide "a systemic solution . . . to remedy systemic injustice." *Freeman* v. *United States*, 564 U.S. 522, 534 (2011) (plurality opinion). District courts apply Section 3582(c)(2) in this systemic fashion in most cases. It appears that district courts typically grant proportional sentence reductions, giving offenders the full benefit of the reduction deemed just by the Commission. Most denials of sentence reductions are for lack of eligibility, not discretionary reasons, and most district courts explain their decisions to deny reductions.

Nevertheless, there are cases, such as this one, in which courts deny proportional reductions, or any reduc-

tion, without providing reasons. Such denials create the appearance of arbitrary treatment, defeating Congress's intention to provide a systemic solution to injustice. Unexplained denials impede appellate review and violate the central goals of the Sentencing Reform Act, including "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).

II. A statement of reasons for the denial of a proportional reduction is also required in light of the central role of the revised Guidelines range in sentence-modification proceedings. The Guidelines reflect the Commission's considered judgment about how much punishment is necessary to meet Congress's salutary sentencing goals. When the Commission amends a Guidelines range, it has determined that sentences imposed under the original Guidelines are greater than necessary to satisfy those goals. The revised range anchors the district court's exercise of discretion when it confronts a sentence-reduction motion under Section 3582(c)(2). When a district court imposes a proportional sentence reduction, the reviewing court may rest assured that the court based the sentence on its original consideration of the factors set forth in 18 U.S.C. § 3553(a), as applied to the revised Guidelines range promulgated by the Commission. By contrast, when a district court imposes a disproportional sentence reduction—or no reduction at all—that assumption does not hold. As Section 3582(c)(2) contemplates, there may be legitimate grounds for denying offenders the benefit of a full sentence reduction. But, without a statement of reasons, an appellate court cannot know if the denial was based on such legitimate grounds. A minimal statement of reasons is necessary to facilitate appellate review.

The amount of explanation required will necessarily vary from case to case. On a spartan record, like the one in this case, however, the district court's failure to provide any reason inappropriately precludes meaningful appellate review.

ARGUMENT

I. THE DENIAL OF A PROPORTIONAL SENTENCE REDUCTION WITHOUT EXPLANATION UNDERMINES THE PURPOSES OF SECTION 3582(C)(2) AND THE SENTENCING REGIME

Congress called for the creation of the Sentencing Guidelines "to inform judicial discretion in order to reduce unwarranted disparities in federal sentencing." *Freeman* v. *United States*, 564 U.S. 522, 525 (2011) (plurality opinion). Congress recognized, however, that there may be situations in which "the Guidelines become a cause of inequality, not a bulwark against it." *Ibid.* Congress thus established a sentence-modification procedure, embodied in Section 3582(c)(2), "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon* v. *United States*, 560 U.S. 817, 828 (2010). In most cases, district courts heed Congress's wishes and proportionally adjust eligible sentences to the new Guidelines range. But when courts deny proportional reductions without explanation, they create an appearance of arbitrariness that undermines the purposes of Section 3582(c)(2) and the sentencing regime.

A. Section 3582(c)(2) Is Intended To Remedy "Systemic Injustice" And To Provide "Systemic Relief"

The Sentencing Commission's expertise occasionally leads it to conclude that promulgated Guidelines are "too

severe, out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the [Sentencing Reform] Act's purposes." *Freeman*, 564 U.S. at 533. The Act contemplates that eventuality and charges the Commission with revising the flawed Guidelines ranges. 28 U.S.C. § 994(*o*). But Congress did not stop there—Section 994(u) allows the Commission to make its revisions retroactive so that incarcerated defendants need not "linger in prison" under sentences now understood to be excessive and unjust. *Freeman*, 564 U.S. at 526.

Section 3582(c)(2) establishes the mechanism by which district courts may reduce sentences that were based on retroactively reduced Guidelines ranges. Section 3582(c)(2) creates "a systemic solution . . . to remedy systemic injustice." *Freeman*, 564 U.S. at 534. Consistent with the systemic nature of the Section 3582(c)(2) remedy, sentence-modification proceedings are not "plenary resentencing proceeding[s]," *Dillon*, 560 U.S. at 826, and courts may modify, or decline to modify, sentences without holding a hearing, *id.* at 826–28. Section 3582(c)(2) provides for only "a limited adjustment to an otherwise final sentence." *Id.* at 826; *see also id.* at 848 (Stevens, J., dissenting) (describing sentence reductions as "rote . . . reductions").

B. In Practice, Courts Typically Grant Proportional Reductions And Provide Reasons When They Do Not

Section 3582(c)(2) ordinarily functions just as Congress envisioned it would. *First*, it appears that, when district courts grant sentence reductions, they typically grant proportional ones. *Second*, courts usually deny sentence reductions for lack of eligibility, not for discretionary reasons, and courts explain most denials.

1. *Courts Typically Grant Proportional Reductions*

a. The Sentencing Commission's data suggest that proportional reductions are the norm. Over the past ten years, the Commission has made three Guidelines amendments retroactive: Amendments 706 (as amended by Amendments 711 and 715),[2] 750,[3] and 782.[4]

The publicly available data do not allow for a case-by-case analysis of granted sentence reductions. However, the Commission's reports analyzing the implementation of Amendments 706 and 750 describe the distribution of within-Guidelines sentences under offenders' original sentences and their modified sentences. *See* 706 Report table 7; 750 Report table 7. The reports contain rough approximations of where reduced sentences fall within the Guidelines. The reports divide sentence ranges into

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[2] *See* United States Sentencing Commission, *Preliminary Crack Cocaine Retroactivity Data Report* (June 2011) ("706 Report"). Amendment 706 modified the base offense levels for crack cocaine offenses to include the statutory minimum penalties and adjusted downward by two levels crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities. *See id.* The three reports discussed in this part of the brief are accessible at https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports.

[3] *See* United States Sentencing Commission, *Final Crack Retroactivity Data Report Fair Sentencing Act* (December 2014) ("750 Report"). Amendment 750 increased the quantities of crack cocaine that trigger the five- and ten-year statutory minimum penalties and eliminated the five-year mandatory minimum for simple possession of crack cocaine. *See id.*

[4] *See* United States Sentencing Commission, *2014 Drug Guidelines Amendment Retroactivity Data Report* (January 2018) ("782 Report").

five segments: (1) the Guidelines minimum, (2) the lower half of the range, (3) the midpoint of the range, (4) the upper half of the range, and (5) the Guidelines maximum. The reports then indicate the percentages of original sentences and of subsequently reduced sentences that fall within each segment.

The data show that the proportions of sentences in each segment of the Guidelines range remain roughly consistent after sentence-modification proceedings. The following chart combines the percentages across both the 706 and 750 Reports.

Guideline minimum	63.7%	64.3%
Lower half of range	17.7%	14.2%
Midpoint of range	5.0%	7.3%
Upper half of range	7.1%	7.2%
Guideline maximum	6.5%	7.0%

See 706 Report table 7; 750 Report table 7. Again, the data do not permit comparison of sentences in individual cases, but the data strongly suggest that courts typically issue proportional reductions.

Qualitative evidence confirms this conclusion. According to a study of Amendment 782's application in six judicial districts that were among those receiving the most Amendment 782 filings, "full sentence reductions for eligible individuals were the norm, and objections to a full reduction were limited to exceptional circumstances." Caryn Devins, *Lessons Learned from Retroactive Resentencing After* Johnson *and Amendment 782*, 10 Fed. Cts. L. Rev. 37, 70 (Winter 2018); *see also id.* at 82 ("In practice, many judges reduced the sentences of eligible individuals by the full two levels unless a reduction would not be appropriate based on the factors listed in 18 U.S.C. § 3553(a) and U.S.S.G. § 1B1.10."). The study also showed that these courts implemented streamlined (and sometimes expedited) administrative processes for dealing with sentence-reduction motions. *Id.* at 70.

Because it appears that sentence-reduction motions seldom result in disproportional reductions, it should be the infrequent case in which a court must do anything except translate the original sentence to the new range.

b. The mechanical way in which district courts seemingly apply retroactive Guidelines amendments is consistent with the Commission's own assumptions. Amendment 782, the amendment at issue in this case, is illustrative. As required by law, *see* 28 U.S.C. § 994(u); United States Sentencing Commission, *Rules of Practice and Procedure*, Rule 4.1A (2016), the Commission analyzed the effect that making Amendment 782 retroactive would have on currently incarcerated defendants, United States Sentencing Commission, Memorandum from Office of Research and Data and Office of General Counsel

to Chair Saris (May 27, 2014) (Amendment 782 Retroactivity Impact Analysis).[5] The Commission's retroactivity impact analysis shows that the Commission expected that eligible offenders would receive the full benefit of Amendment 782's Guidelines reduction—*i.e.*, proportional reductions of their sentences.

In conducting the retroactivity impact analysis, the Commission determined the number of offenders eligible for an Amendment 782 reduction and then "hypothetically 'resentenced' [them] with [a] computer program as if the amendment had been in effect" when those offenders were originally sentenced. Amendment 782 Retroactivity Impact Analysis 16. The Commission's model "resentenced" offenders "to the same relative position within (or outside) the original Guideline range," *id.* table 8—which is to say, the Commission assumed that the average offender would receive a full two-level (*i.e.*, proportional) sentence reduction. On that basis, the Commission projected that the 46,376 potentially eligible offenders would enjoy an average sentence reduction of 25 months (or 18.8%), saving the Bureau of Prisons 79,740 bed years.[6] United States Sentencing Commission, Memorandum from Office of Research and Data to Chair Saris 2 (July 25, 2014) (Amendment 782 Key Data Summary).[7]

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[5] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf.

[6] A "bed year" is the cost to the Bureau of Prisons of incarcerating one inmate for one year.

[7] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140725

Congress created the Commission to reduce unwarranted disparities in federal sentencing by crafting Guidelines that "reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *Rita* v. *United States*, 551 U.S. 338, 350 (2007). By making Amendment 782 retroactive, the Commission reasoned that for offenders like petitioner, the Guidelines ranges under which they were sentenced are greater than necessary to achieve the objectives of Section 3553(a). The Commission's revised Guidelines ranges reflect its latest reasoned judgment about the appropriate term of imprisonment, and the Commission apparently expected that district courts would heed that judgment in mine-run cases. The Commission's data suggest that courts are doing just that.

2. *Denials Typically Are For Nondiscretionary Reasons And Are Explained*

The Commission also compiles data related to outright denials of sentence-reduction motions. In most cases, sentence-reduction motions are denied because the offender is ineligible for reduction—not for discretionary reasons. Even then, some explanation usually accompanies the denial. Accordingly, requiring district courts to provide an explanation when denying sentence

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-Drug-Retro-Analysis.pdf. The Commission delayed implementation of Amendment 782 by a year because it was concerned about lacking adequate reentry resources to accommodate the many offenders who would be released if the Amendment was applied proportionally. *See* United States Sentencing Commission, Amendment to the Sentencing Guidelines 1–2 (July 18, 2014), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718_RF_Amendment782.pdf.

reductions will not alter the practice in most district courts.

The following chart again compiles data from the Commission's reports analyzing sentence-reduction motions under Amendments 706, 750, and 782.[8]

Amendment 706	77%	5%[9]
Amendment 750	72%	12%[10]
Amendment 782	66%	13%

As these data reveal, most sentence-reduction denials occur because the offender is ineligible for a reduction. In many districts, the Commission or the U.S. Probation Office makes at least preliminary eligibility determinations. *See* Devins, *supra*, at 70. Accordingly, many denials will only require the district court to incorporate the existing eligibility reasoning.

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[8] *See* 706 Report, table 9; 750 Report, table 9; 782 Report, table 8.

[9] "Of the 444 cases in which the court did not give a reason for the denial, 289 were previously identified as ineligible by the Commission for sentence reduction." 706 Report, table 9 n.1.

[10] "Of the 726 cases in which the court did not give a reason for the denial, 595 were previously identified as ineligible by the Commission for sentence reduction." 750 Report, table 9 n.1.

The data further demonstrate the rarity with which district courts fail to provide explanations for reduction denials. Across all cases, district courts explained 90% of all denials of sentence-reduction motions. In other words, it appears that courts are already doing what petitioner contends is required, and there is no evidence that courts are straining under the burden of providing reasons when denying sentence reductions.

C. Denials Of Proportional Reductions Without Explanation Create An Appearance Of Arbitrariness

Although courts typically grant proportional reductions and explain their decisions to deny reductions, as this case illustrates, that practice is not uniform. The unexplained, differential treatment of eligible offenders creates an appearance of arbitrariness and denies offenders the "systemic solution" enacted by Congress. *Freeman*, 564 U.S. at 534.

Imagine two offenders convicted of the same drug trafficking crime. Both are model prisoners serving identical original sentences, and both qualify for a sentence reduction under Amendment 782. Upon moving for relief under Section 3582(c)(2), the offenders receive only a boilerplate form. One sentence is reduced proportionally, and the other is not reduced at all. The first offender properly benefitted from the Commission's enlightened view of just punishment for the crime, whereas the second must, in effect, serve a sentence that is tantamount to an upward variance from the revised Guidelines. If the district court need not explain its decision to deny a reduction, the appellate court cannot meaningfully review the decision to determine whether it was an abuse of discretion.

Section 3582(c)(2) instructs courts to consider the Section 3553(a) factors in determining whether, and to what extent, to grant a sentence reduction. *See Dillon*, 560 U.S. at 827. Without any statement of reasons, it would be impossible for the reviewing court to assess, in particular, whether the sentence was "greater than necessary" "to provide just punishment," 18 U.S.C. § 3553(a)(2), or whether it resulted in "unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6). And seemingly arbitrary decisions—especially those involving restrictions on liberty—erode confidence in the justice system and the rule of law.

Sentence-modification proceedings under Section 3582(c)(2) are particularly susceptible to perceived arbitrariness. Although courts must weigh the Section 3553(a) factors as in original sentencings, sentence-modification proceedings are not plenary resentencing proceedings. Offenders thus do not benefit from the full panoply of procedural protections that apply in original sentencings. *Dillon*, 560 U.S. at 826–28. Defendants need not be present. *See* Fed. R. Crim. P. 43(b)(4). The proceedings are not adversarial, and many districts do not appoint counsel. *See* Devins, *supra*, at 69–70. The proceedings can originate, moreover, on the court's own motion. *See* 18 U.S.C. § 3582(c)(2).

The government's position—and the logical conclusion of the Tenth Circuit's decision—is that the unexplained differential treatment of offenders eligible for sentence reductions is perfectly acceptable. *See* Br. in Opp. 15. For starters, it is difficult to reconcile that position with this Court's admonition that a court should explain its decision to depart from the applicable Guide-

lines range. *See Gall* v. *United States*, 552 U.S. 38, 50 (2007). After all, a decision to deny a sentence reduction to an eligible offender is analogous to a "variance" from the retroactively applicable range. *Ibid.* A reviewing court cannot determine whether a district court abused its discretion in declining to apply the new Guidelines range if it does not know why the district court did so.

Such an outcome, moreover, is antithetical to Congress's goal in enacting Section 3582(c)(2): to provide "a systemic solution . . . to remedy systemic injustice." *Freeman*, 564 U.S. at 534. Unexplained decisions to deny offenders the benefit of Section 3582(c)(2) creates the appearance that courts have drawn "arbitrary distinctions between similar defendants." *Ibid.*

That outcome likewise undermines the central missions of federal sentencing law. It fails to ensure that sentences are "sufficient, but not greater than necessary." *See* 18 U.S.C. § 3553(a). It fails to reduce unwarranted disparities in sentencing. *See* 18 U.S.C. § 3553(a)(6). And it fails to heed Section 3553(a)'s command to impose sentences that promote respect for the rule of law. See 18 U.S.C. § 3553(a)(2)(A). The losing offender will surely be unconvinced "that justice has been done in his case [and] that society has dealt with him fairly." *Rita*, 551 U.S. at 367 (Stevens, J., concurring).

The solution is to require a basic explanation of the reasons why a district court has denied an offender the full benefit of a revised Guidelines range.

II. THE ANCHORING WEIGHT OF THE GUIDELINES REQUIRES DISTRICT COURTS TO EXPLAIN DECISIONS TO DENY PROPORTIONAL REDUCTIONS

Time and again this Court has emphasized the centrality of the Sentencing Guidelines in the federal criminal process. The Sentencing Commission draws on its deep well of national experience to formulate and refine the Guidelines. *See Kimbrough* v. *United States*, 552 U.S. 85, 108–09 (2007). "[G]uided by a professional staff with appropriate expertise," *id.* at 109, the Commission collects and analyzes empirical sentencing data from all 94 federal judicial districts to fulfill its charge under the Sentencing Reform Act: "to create a comprehensive sentencing scheme in which those who commit crimes of similar severity under similar conditions receive similar sentences," *Freeman*, 564 U.S. at 533.

Guidelines amendments, too, are products of the Commission's reasoned judgment. Such is the case with Amendment 782. The Commission determined—after receiving comment from the Attorney General, the Director of the Federal Bureau of Prisons, the federal judiciary, members of Congress, academics, law enforcement groups, and the public—that base offense levels for drug trafficking offenses were too high. Specifically, the Commission concluded that the applicable Guidelines ranges were greater than necessary to induce defendants to plead guilty and resulted in significant overcapacity of (and correspondingly high costs to) the Federal Bureau of Prisons. U.S.S.G. app. C, supp. amend. 782. To remedy those problems, in 2014 the Commission lowered the base offense levels for drug trafficking offenses and, in Amendment 788, made Amendment 782 retroactive.

Allowing district courts to sidestep the minimal demand of articulating a basis for denying a proportional sentence reduction precludes meaningful appellate review while at the same time disrupting Congress's carefully balanced distribution of sentencing judgment. District courts will be able to ignore the Commission's judgment as to the quantum of just punishment and Congress's decision "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828. And reviewing courts will be cut out of the process entirely, left only to review checkmarks on a boilerplate form.

A. The Guidelines Range Anchors The Court's Weighing Of The Section 3553(a) Factors At Original Sentencing

The Guidelines enter the equation long before conviction by informing prosecutorial decisions and plea bargaining. *See Molina-Martinez* v. *United States*, 136 S. Ct. 1338, 1342 (2016); *see also Freeman*, 564 U.S. at 538 (Sotomayor, J., concurring). When the time comes to impose a sentence, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines [are] the starting point and the initial benchmark." *Gall*, 552 U.S. at 49. District courts "*must* begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process." *Id.* at 50 n.6 (emphasis added). The Guidelines are the "essential framework" for federal sentencing and "anchor . . . the district court's discretion." *Molina-Martinez*, 136 S. Ct. at 1345 (alteration in original) (quoting *Peugh* v. *United States*, 569 U.S. 530, 549 (2013)).

The anchoring effect the Guidelines have on sentencing courts is "real and pervasive." *Molina-Martinez*, 136 S. Ct. at 1346. "District courts, as a matter of course, use

the Guidelines range to instruct them regarding the appropriate balance of the relevant federal sentencing factors." *Id.* at 1347. "[C]onsiderable empirical evidence," *Peugh*, 569 U.S. at 543, shows that the Guidelines do what they were designed to do: "serve as the starting point for the district court's decision and anchor the court's discretion in selecting an appropriate sentence," *Molina-Martinez*, 136 S. Ct. at 1349.

B. A Revised Guidelines Range Anchors The Court's Weighing Of The Section 3553(a) Factors In Deciding A Sentence-Reduction Motion

The Guidelines play an equally crucial role in sentence-modification proceedings under Section 3582(c)(2). Congress gave the Commission a "substantial role . . . with respect to sentence-modification proceedings." *Dillon*, 560 U.S. at 826. A district court's resolution of a motion under Section 3582(c)(2) for sentence reduction is no ordinary exercise of discretion. Section 3582(c)(2) "circumscribe[s]" the court's discretion. *Dillon*, 560 U.S. at 829. "A court's power under § 3582(c)(2) . . . depends in the first instance on the Commission's decision not just to amend the Guidelines but to make the amendment retroactive" and is "constrained by the Commission's statements dictating by what amount the sentence of a prisoner serving a term of imprisonment affected by the amendment may be reduced." *Id.* at 826 (internal quotation marks omitted). The court must further consider the factors set forth in Section 3553(a) and may grant a reduction only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

The court's discretionary decision takes place against the backdrop of the Sentencing Commission's reasoned judgment that the previously applicable Guidelines

range was too severe. In sentence-modification proceedings the revised Guidelines range serves as the new "anchor[ ]." *Molina-Martinez*, 136 S. Ct. at 1345. When a district judge contemplates whether to grant the reduction deemed appropriate by the Sentencing Commission, the revised Guidelines are the "framework or starting point—[the] basis, in the commonsense meaning of the term—for the judge's exercise of discretion." *Freeman*, 564 U.S. at 529 (plurality opinion). Under the Commission's applicable policy statement, U.S.S.G. § 1B1.10, every other Guidelines application decision is held constant. *Dillon*, 560 U.S. at 827, 829; *see Freeman*, 564 U.S. at 530 (stating that U.S.S.G. § 1B1.10 "seeks to isolate whatever marginal effect the since-rejected Guideline had on the defendant's sentence"). The judge then weighs the Section 3553(a) factors and the other factors identified in Section 1B1.10 and determines the extent of the reduction. *Dillon*, 560 U.S. at 827.

If the judge grants a proportional reduction, an appellate court's job is simple. The appellate court can readily infer how the district court balanced the Section 3553(a) factors by looking to the original sentencing record. In other words, in the case of a proportional reduction, an appellate court can appropriately assume that the district court's exercise of discretion was anchored by the revised Guidelines range and that the Section 3553(a) balancing deposited the offender in the same (relative) place in that range.

Consider, for example, a situation in which the district court in this case had reduced petitioner's sentence to the bottom of the new Guidelines range, 108 months. Because the district court had previously explained its decision to sentence petitioner to the bottom of the origi-

nal Guidelines range, *see* Pet. Br. 4, an appellate court could appropriately assume that the district court's balancing of the Section 3553(a) factors in the sentence-modification proceeding yielded a sentence at the bottom of the new Guidelines range, just as the Sentencing Commission had expected when it assessed the effect of making Amendment 782 retroactive. *See* pp. 9–10, *supra*.

That same assumption does not hold when a district court issues a disproportional sentence reduction. A disproportional reduction may reflect the court's assessment that the Section 3553(a) factors (or the related factors identified in U.S.S.G. § 1B1.10) warrant a different relative sentence within the new Guidelines range. Because the revised Guidelines range anchors the judge's discretion and the Commission's policy statement does not permit any other changes to the Guidelines application, *see* p. 19, *supra*, one conclusion is that the Section 3553(a) factors caused the court to arrive at a different place in the Guidelines range than it did originally. But, absent some explanation from the district judge, an appellate court has no way to know why.

Another explanation for a disproportional sentence reduction is that the court simply erred. To date, district courts have processed some 48,000 Amendment 782 applications. 782 Report table 1. In 2015, when petitioner moved for his sentence reduction, there were 21,576 retroactive-amendment sentence modifications nationwide. United States Sentencing Commission, *Annual Report and Sourcebook of Federal Sentencing Statistics* (2015),

table 62.[11] The Tenth Circuit alone was home to 1,269 such motions that year. *Id.* Given the sheer volume of such motions, it would hardly be surprising if mistakes occurred—particularly because some courts decide whether to grant sentence reductions on their own motions. *See* Devins, *supra*, at 70 ("In many districts, the U.S. Probation Office made an initial determination as to which individuals were eligible and the court decided the sentence reduction motions, often on its own motion.").

To be sure, there may well be legitimate reasons for a district court to deny a proportional reduction. Perhaps a particular offender poses an especially severe risk to public safety. *See* U.S.S.G. § 1B1.10 cmt. 1(B)(ii) (directing the court to "consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment"). Perhaps the offender's record of misconduct in prison alters the balancing analysis. *See id.* cmt. 1(B)(iii) ("The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment . . . ."). The court might have chosen the original sentence because it deemed the sentence appropriate in absolute terms. The court might even have a policy disagreement with the revised Guidelines range such that the court does not believe the new Guidelines adequately reflect the seriousness of the offense. *See Spears* v. *United States*, 555 U.S. 261, 265–66 (2009) (per curiam); *see also Kimbrough*, 552 U.S. at 109 (suggesting that "closer review may be in order when the

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[11] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/Table62.pdf (2015).

sentencing judge varies from the Guidelines based solely on the judge's view that the Guidelines range fails properly to reflect § 3553(a) considerations even in a mine-run case" (internal quotation marks omitted)).

Whatever the reason, the basic point remains: without any explanation, an appellate court cannot know why a district court did what it did, much less determine whether the district court abused its discretion. Especially in cases like this one—where the record contained no disqualifying disciplinary infractions and the government did not contest the reduction, there is nothing for an appellate court to review if a district court does not provide a reason. And review is particularly warranted when an offender, like petitioner, originally received a sentence at the bottom of the then-applicable Guidelines range. Sentences at the bottom of a Guidelines range are "conspicuous" because they evidence a court's intention "to give the minimum recommended by the Guidelines." *Molina-Martinez*, 136 S. Ct. at 1347–48. The only way to enable meaningful appellate review is to require some explanation for the anomalous outcome.

Meaningful appellate review remains critical to a just, fair sentencing regime. Some motivations will fail the abuse-of-discretion standard on appeal: "After all, a district judge who gives harsh sentences to Yankees fans and lenient sentences to Red Sox fans would not be acting reasonably . . . ." *Rita*, 551 U.S. at 365 (Stevens, J., concurring); *see also Gall*, 552 U.S. at 68 (Alito, J., dissenting) ("A decision calling for the exercise of judicial discretion hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review." (internal quotation marks omitted)). Other motivations are more pernicious and explicitly prohibited from a modifying court's calculus. *See* U.S.S.G. § 5H1.10

(forbidding use of race, sex, national origin, creed, religion, and socioeconomic status in the determination of a sentence). Without an explanation of a disproportional sentence reduction, an appellate court cannot know if the Section 3553(a) factors were properly considered (or were considered at all) or if impermissible factors infected the district court's decision.

In sum, if the Guidelines are to remain the "lodestar" for federal sentencing, *Molina-Martinez*, 136 S. Ct. at 1346, district courts must explain any deviation that results in a disproportional sentence reduction.

C. The Depth Of Reasoning Will Depend On The Circumstances, But No Reasoning Is Not Enough

The amount of reasoning sufficient to justify a disproportional reduction (or a denial of a reduction altogether) will necessarily vary from case to case. As the Court previously explained in the original-sentencing context, "[t]he appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances." *Rita*, 551 U.S. at 356. It would be impossible to articulate a comprehensive test in this case that would account for the vast range of circumstances that present themselves in sentence-modification proceedings.

At a minimum, where a district court does not explain a disproportional reduction and the government did not advocate for one, an appellate court cannot meaningfully review the district court's decision. The district court provided no reason whatsoever for its decision in this case, and the record contained evidence of positive post-conviction conduct and one minor disciplinary infraction that did not render petitioner ineligible for the reduction. *See* Pet. Br. 4–5. Especially where the gov-

ernment stipulated to petitioner's eligibility and did not argue in favor of any particular sentence, it is impossible to know the reason why the district court decided not to grant a proportional sentence reduction or whether, perhaps, it simply made a mistake.

A ruling for petitioner will allow for meaningful appellate review without "transform[ing] the proceedings under § 3582(c)(2) into plenary resentencing proceedings." *Dillon*, 560 U.S. at 827. District courts face requirements at a sentencing or resentencing that do not apply at a sentence-modification proceeding. Congress requires a district court to "state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. § 3553(c). When the "range exceeds 24 months," the sentence is not of the kind for which a range is established, or the sentence is outside the range, Congress requires additional specificity. 18 U.S.C. §§ 3553(c)(1)–(2). In addition, the defendant "must be present" for sentencing. Fed. R. Crim. P. 43(a)(3).

The procedural requirement to state reasons in open court in the presence of the defendant does not apply in sentence-modification proceedings. *Dillon*, 560 U.S. at 828. But, for all the reasons already set forth, that fact does not obviate the need for a district court to provide a minimal statement of reasons when it grants a disproportional sentence reduction or denies a reduction. To the contrary, the lack of procedural protections in sentence-modification proceedings only heightens the need for a statement of reasons. As this Court has explained, Section 3582(c)(2) provides for "only a limited *adjustment* to an otherwise final sentence and not a plenary resentencing proceeding." *Id.* at 826 (emphasis added). A proportional reduction reflects just such an "adjustment" and is appropriately conducted without the

offender's involvement. When a district court's renewed assessment of the Section 3553(a) factors leads it to impose a disproportional sentence reduction or to deny a sentence reduction, however, the offender's relative lack of involvement makes it all the more imperative that the court provide an explanation to enable correction of abuses of discretion and mistakes on appeal.

The Tenth Circuit grounded the decision below on the misguided premise that a court need not provide reasons for an original within-Guidelines sentence. *See* J.A. 55. That premise is incorrect. Even if a district court need not provide extensive reasons for a within-Guidelines sentence, it must provide some reasoning to facilitate appellate review. As the Court held in *Gall*, "courts of appeals must review all sentences—whether inside, just outside, or significantly outside the Guidelines range—under a deferential abuse-of-discretion standard." 552 U.S. at 41. Appellate courts must "ensure that the district court committed no significant procedural error, such as . . . failing to consider the § 3553(a) factors, . . . or failing to adequately explain the chosen sentence." *Id.* at 51. Even for a within-Guidelines original sentence, the appellate court should further "consider the substantive reasonableness of the sentence." *See ibid.* To facilitate this review, at original sentencing "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Rita*, 551 U.S. at 356 (citing *United States* v. *Taylor*, 487 U.S. 326, 336–37 (1988)).

Again, when a court grants a proportional reduction, a reviewing court may assume that the court's articulation of reasons in the original sentencing proceeding

motivated it to select a sentence in the same relative position in the new Guidelines range. It is only where the district court denies an offender the reduction deemed appropriate by the Commission to remedy injustice that a reason must be provided. Any other conclusion would turn the "systemic solution" created by Congress, *Freeman*, 564 U.S. at 534, into an arbitrary procedure in which a minority of offenders are denied a just reduction without explanation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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